

OFFICE OF THE ATTORNEY GENERAL



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March 19, 1999

Honorable Frank H. Riddick
Judge of Probate
Madison County Courthouse
100 North Side Square
Huntsville, Alabama 35801

Probate Judges – Marriage Licenses

Marriages pursuant to a license
issued in Alabama must be solemnized in Alabama to be valid.

Dear Judge Riddick:

This opinion of the Attorney General is issued in response to your request.

QUESTION ONE

Is this a legal marriage under Alabama law since the license was issued in Alabama but the ceremony was performed in another state?

FACTS AND ANALYSIS

In your letter you wrote:

Recently I issued a marriage license to a couple who are residents of Madison County, Alabama. The marriage ceremony was performed by a minister who is also a resident of Madison County. The ceremony was performed in another

state. The minister is pastor of the church where the marriage was solemnized.

In Alabama, persons wishing to marry must apply for a marriage license before solemnizing the marriage. Section 30-1-9 of the Code of Alabama provides that “[n]o marriage shall be solemnized without a license . . . issued by the judge of probate. . . . The license is an authority to anyone qualified to solemnize marriages to join together in matrimony the persons named therein.” ALA. CODE § 30-1-9 (1998). Section 30-1-7(a) of the Code of Alabama sets forth who is authorized to solemnize marriages; it reads, “licensed minister[s] of the gospel” are empowered to solemnize marriages in the “Christian church or society of which he is a member.” ALA. CODE § 30-1-7(a) (1998).

From your letter, it appears that the license was applied for and issued as required by law and that the minister was qualified to perform the ceremony as required by law, except that his church is in another state. Since Alabama lacks any authority to license activities that occur outside her borders, this ceremony performed in Tennessee was not a valid solemnization under Alabama law.

Likewise, Tennessee law provides that “[b]efore being joined in marriage, the parties shall present to the minister or officer a license under the hand of a county clerk in this state, directed to such minister or officer, authorizing the solemnization of a marriage between the parties.” TENN. CODE § 36-3-103(a) (emphasis added). This marriage was, thus, also not a valid marriage under Tennessee law.

CONCLUSION

Marriages solemnized pursuant to a license issued in Alabama must be performed in Alabama to be valid. Neither Alabama nor Tennessee state law allows for a marriage to be solemnized in Tennessee pursuant to an Alabama marriage license.

QUESTION TWO

If this is a legal marriage, should the circumstances surrounding it be noted on the face of the marriage certificate when it is forwarded to the Bureau of Vital Statistics for recording?

FACTS, ANALYSIS, & CONCLUSION

As stated in the Conclusion to Question One, the marriage you described in your letter was not properly solemnized and, therefore, is not a proper ceremonial marriage under state law. Under section 30-1-9 of the Code of Alabama, Alabama marriage licenses are valid for 30 days from the date they are issued. If this thirty days has not passed, the couple could still have the marriage solemnized in Alabama, thereby making the marriage and the license valid. Regardless, Alabama also recognizes common law marriages as valid under her laws. Campbell v. Gullott, 43 Ala. 57 (1869); Herd v. Herd, 60 So. 885 (1915). A valid common law marriage exists if the parties to the marriage (1) have the capacity to marry, (2) have a present agreement or mutual consent to enter into the marriage relationship, (3) have public recognition of the existence of the marriage, and (4) cohabit or have a mutual assumption of marital duties and obligations. Adams v. Boan, 559 So. 2d 1084 (Ala. 1990). It appears that the couple in your letter has a valid common law marriage. Common law marriages spring into existence at the time of the concurrence of the four elements, but their existence or nonexistence remain as questions of law and fact which reasonable men might dispute in a court of competent jurisdiction. Attorney General's opinion to Honorable Paul Thomas, DeKalb County Probate Judge, dated October 28, 1991, A.G. No. 92-00041. Since there has been no valid, ceremonial marriage and since common law marriages are not recorded, nothing should be recorded or filed with the Bureau of Vital Statistics.

QUESTION THREE

If the marriage is flawed, what action should be taken to correct it, and whose responsibility is it to initiate the corrective action?

FACTS, ANALYSIS, & CONCLUSION

As previously discussed in the Facts, Analysis, and Conclusion portion of Question Two, the ceremonial marriage is invalid; although the couple may have a valid common law marriage. If the couple wants a valid, ceremonial marriage, they should either: (1) apply for a new license and conduct a ceremony within Alabama or (2) if the thirty days during which their original license was valid have not expired, they could hold a ceremony in Alabama to validate their ceremonial marriage. It is the couple's responsibility to make these decisions and take the actions necessary to correct these problems.

Honorable Frank H. Riddick
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Troy R. King of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:

A handwritten signature in cursive script, reading "Carol Jean Smith".

CAROL JEAN SMITH
Chief, Opinions Division

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